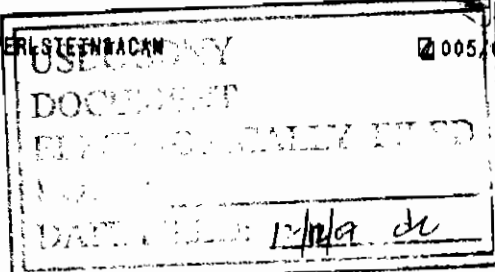


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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



FINGERLAKES MALL, LLC,

Plaintiff,

Case No.: 07-cv-8768 (BSJ)

-against-

**STIPULATION OF
SETTLEMENT**

FINGERLAKES MALL ACQUISITION, LLC.

Defendant.

WHEREAS, Fingerlakes Mall, LLC commenced the instant action on July 27, 2007 when the complaint was filed with the Clerk of the Court for the United States District Court for the Southern District of New York; and

WHEREAS, the complaint was served upon the defendant Fingerlakes Mall Acquisition, LLC by service upon Vincent Nicoletta, a partner at Greenberg Nicoletta & Stein, LLP, a limited liability partnership; and

WHEREAS, proof of service of the complaint was duly filed with the Clerk of the Court for the United States District Court for the Southern District of New York on August 3, 2007; and

WHEREAS, the Clerk of the Court for the United States District Court for the Southern District of New York certified that the defendant defaulted in filing an answer, appearance, or filing a dispositive motion with respect to the complaint, and noted the defendant's default on the docket related to this action; and

WHEREAS, on October 18, 2006, plaintiff transferred to defendant certain land and improvements in Aurelius, New York commonly known as Fingerlakes Mall (the "Property") pursuant to the terms of an Agreement of Sale dated August 18, 2006 (the "Contract"); and

WHEREAS, the Contract, among other items, provided that both plaintiff and defendant would have certain surviving post-closing obligations as to each other. The performance of two (2) of those obligations were secured by two (2) separate escrow funds deposited with, and

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currently being held by, Lawyers Title Insurance Company (the "Escrow Agent"); one, in the amount of \$425,000.00 (the "Lease Escrow"); and the other, in the amount of \$418,568.82 (the "NYDOT Escrow"); and

WHEREAS, certain other surviving post-closing obligations with respect to post-closing rent collections were provided for in the Contract; and

WHEREAS, the plaintiff and defendant now wish to resolve certain controversies that have arisen in connection with the performance of their respective surviving post-closing obligations described above (collectively, the "Post-Closing Obligations"), as well as resolve this litigation; and

WHEREAS, the parties have consulted with their respective attorneys and desire to resolve all outstanding issues between them with respect to the Post-Closing Obligations and dismiss this litigation;

IT IS HEREBY STIPULATED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. Simultaneously with the execution of this Stipulation of Settlement (the "Stipulation"), the parties hereto will both sign the direction letter, which is addressed to the Escrow Agent and which is included as Exhibit A to this Stipulation (the "Lease Direction"), directing the Escrow Agent to deliver to each of the parties (from the Lease Escrow), pursuant to the wire instructions described in the Lease Direction, the following sums:

- a. Plaintiff will receive \$76,000.00 together with 17.65% of the interest that has accrued on the Lease Escrow while it was being held by the Escrow Agent. This payment will fully satisfy any and every obligation defendant and plaintiff may have to each other under Section 4.3 of the Contract.
- b. Plaintiff will receive \$155,119.83, which sum represents money that has been collected by the defendant as of August 31, 2007, and represents the entire amount that has accrued for the benefit of the plaintiff (i.e., the "true up" under Section 15.1.1 of the Contract).

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- c. Plaintiff will receive a payment of \$10,000 which will satisfy any and every obligation defendant and plaintiff may have to each other concerning their respective legal fees through the date of this Stipulation.
- d. The rest and remainder of the Lease Escrow, less any fees charged by the Escrow Agent, together with any interest that has accrued on it and which has not been paid to plaintiff pursuant to subparagraph 1(a) above, will be paid to the defendant.
2. e. Plaintiff is hereby released by defendant from any obligation it may have to defendant to perform the NYDOT Work as is provided for in Section 4.8 of the Contract ("NYDOT Work"). From this date forward, plaintiff will no longer have any obligation to perform any work or incur any expense in connection with the construction of a deceleration lane at the eastern end of the Property and with making any changes to the Clark Street Extension.
- b. Defendant hereby assumes full responsibility for the performance and payment of the NYDOT Work.
3. Attached to this Agreement as Exhibit B is a direction letter from plaintiff and defendant to the Escrow Agent (the "NYDOT Direction") directing the Escrow Agent to pay the full amount of the NYDOT Escrow, together with any interest that has accrued on it, to the defendant. Plaintiff and defendant will both sign the NYDOT Direction simultaneously with the execution of this Agreement and will both deliver the signed counterparts to Escrow Agent.
4. Defendant is hereby released by plaintiff from any obligation to plaintiff under Section 15.1.1 of the Contract, plaintiff hereby acknowledging and agreeing that all of defendant's obligations thereunder have been satisfied in full.
5. All the other obligations, if any, that plaintiff and defendant may have under the Contract, to each other or to anyone else, are unchanged by this Stipulation and will continue in full force and effect.
6. This Stipulation may be executed in several counterparts, each of which may be an original and all of which shall constitute but one and the same instrument.

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7. This Stipulation shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns.

8. This Stipulation shall be governed exclusively by the applicable laws of the State of New York without regard or reference to its conflict of laws principles.

9. This Stipulation and its exhibits shall be deemed to have been drafted by all parties to remove any negative inference against the drafter hereof.

10. This Stipulation may not be modified unless done so in a writing signed by all parties.

11. This Stipulation shall only be used by the parties hereto, and nothing contained herein shall be permitted to be used for any other purpose.

12. Nothing contained herein shall be deemed a waiver or admission of any rights and liabilities among the parties, other than as specifically set forth herein. In the event any provision hereof is deemed to be ambiguous, the parties hereby agree that such ambiguity shall be resolved in favor of the plaintiff.

13. This action is dismissed with prejudice and without costs to either party and all motions, orders or judgments are deemed withdrawn, moot or satisfied.

14. Plaintiff and defendant agree to perform any additional acts, including execution of such additional documents, as may be reasonably necessary to effectuate the terms of this Stipulation.

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15. This Stipulation shall be "so ordered" by the United States District Court for the Southern District of New York.

Dated: Jericho, New York
December 10, 2007

SILVERMAN PERLSTEIN & ACAMPORA LLP
Attorneys for plaintiff Fingerlakes Mall, LLC

By: 

Robert J. Ansell (RJA-3710)
Member of the Firm
100 Jericho Quadrangle, Suite 300
Jericho, New York 11753
(516) 478-8300

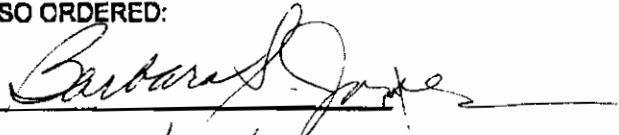
Dated: New York, New York
December 12, 2007

TROUTMAN SANDERS LLP
Attorneys for defendant Fingerlakes Mall
Acquisition, LLC

By: 

Robert J. Chanis, Esq. (RJC-7723)
The Chrysler Building
405 Lexington Avenue
New York, New York 10174
(212) 704-8007

SO ORDERED:


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EXHIBIT A

LEASE DIRECTION

FINGERLAKES MALL ACQUISITION LLC

c/o American Siba
580 Fifth Avenue, 33rd Floor
New York, NY 10036

December , 2007

Lawyers Title Insurance Corp.
c/o Robert K. Bergan, Esq.
Boyle & Anderson P.C.
110 Genesee Street, Suite 300
Auburn, NY 13021

Re: Lease Escrow established October 18, 2006 (\$425,000.00)

Ladies and Gentlemen:

The undersigned hereby directs you to disburse the funds currently held by you pursuant to the terms of captioned escrow agreement as follows:

1. Please forward the sum of \$240,119.83 together with 17.65% of the interest that has accrued on the original principal sum as follows:

Account Name: Fingerlakes Mall, LP
Bank: Bank of America, NA
City, State: Atlanta, GA
ABA: 026009593
Account Number: 0032 7448 8546
Attn: Jackie Young (404) 236-2283

2. Please forward the rest and remainder of the funds together with all other interest accrued thereon to Fingerlakes Mall Acquisition LLC as follows:

Account Name: 350 West Broadway, LP
Bank Name: Sovereign Bank
Bank Address: 551 5th Avenue 26th Floor, New York, NY 10176
Account Number: 3036001448
ABA Number: 231372891

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With the disbursement of the funds as described above, the tenure of your escrow is terminated and you are relieved of any future obligation or liability in connection with the same.

Thank you for your cooperation throughout this period.

FINGERLAKES MALL ACQUISITION, LLC

By: _____
Name:
Title:

CONSENTED AND AGREED TO:
FINGERLAKES MALL, LLC

By: _____
Name:
Title:

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EXHIBIT B

NYDOT DIRECTION

FINGERLAKES MALL ACQUISITION LLC

c/o American Siba
580 Fifth Avenue, 33rd Floor
New York, NY 10036

December , 2007

Lawyers Title Insurance Corp.
c/o Robert K. Bergan, Esq.
Boyle & Anderson P.C.
110 Genesee Street, Suite 300
Auburn, NY 13021

Re: NYDOT Escrow established October 18, 2006 (\$418,568.62)

Ladies and Gentlemen:

The undersigned hereby directs you to disburse the full amount currently held by you pursuant to the above referenced escrow agreement together with all interest which has accrued thereon by wire to Fingerlakes Mall Acquisition LLC as follows:

Account Name: 350 West Broadway, LP
Bank Name: Sovereign Bank
Bank Address: 551 5th Avenue 26th Floor, New York, NY 10176
Account Number: 3036001448
ABA Number: 231372691

With the disbursement of the funds as described above, the tenure of your escrow is terminated and you are relieved of any future obligation or liability in connection with the same.

Thank you for your cooperation throughout this period.

FINGERLAKES MALL ACQUISITION, LLC

By: _____
Name:
Title:

DISBURSEMENT CONSENTED TO:

FINGERLAKES MALL, LLC

By: _____
Name:
Title:

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